NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR 08-931

JOHN WILLIE WEBB APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** April 8, 2009 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, [NO. CR 2007-4332] HONORABLE WILLARD PROCTOR, JR., JUDGE AFFIRMED

COURTNEY HUDSON HENRY, Judge

In a bench trial, the Pulaski County Circuit Court found appellant John Willie Webb guilty of possession of cocaine with intent to deliver, second-degree battery, resisting arrest, and possession of marijuana. As a result, appellant received concurrent sentences totaling ten years in prison. For reversal, appellant contends that the trial court erred by denying his motion to suppress evidence. We affirm because appellant lacks standing to contest the seizure of the evidence.

The Pulaski County Prosecuting Attorney charged appellant with the above-named offenses following an encounter between appellant and Little Rock police officers. Prior to trial, appellant filed a motion to suppress the evidence seized by those officers. The trial court heard the motion at the same time it conducted the trial of the charges levied against appellant.

The record discloses that on September 14, 2007, Officer Jacob Koehler and Officer Art McDaniel were on patrol at 5:00 a.m. when they observed a vehicle parked along a tree line in a vacant lot at the intersection of Gaines and 28th Street. The officers noticed inside the vehicle one individual, the appellant, who was reclining in the driver's seat. Officer Koehler testified that the area was prone to narcotics activity, and Officer McDaniel added that traffickers in narcotics customarily sold drugs from parked vehicles in darkened places during the early hours of the morning. The officers decided to approach the vehicle to check on appellant's welfare and to ascertain what he was doing in the vacant lot.

Officer Koehler approached the vehicle on the driver's side, while Officer McDaniel advanced toward the passenger side. The officers ordered appellant to put his hands on the ceiling of the vehicle, but appellant did not comply with that directive. Instead, he emerged from the vehicle holding money in his right hand and clenching in his left hand what appeared to be a shiny object, which later proved to be two cellophane baggies. According to the officers, appellant was overly excited and was yelling repeatedly, "All I've got is my money." Officer Koehler then grabbed appellant's right arm, and when appellant pulled away, Officer McDaniel tried to grab appellant's left arm. Appellant became increasingly aggressive, and all three men wrestled to the ground. In the ensuing struggle, appellant kicked and punched the officers, and he attempted to gain control of the officers' weapons. Koehler and McDaniel finally subdued appellant with pepper spray and help from other officers who arrived at the scene.

The officers testified that they found a baggy containing an off-white substance and a baggy containing green vegetable matter on the ground near the driver's side of the vehicle. Testing revealed that the off-white substance proved to be 9.8 grams of cocaine and that the green, leafy material was 2.8 grams of marijuana. Additionally, Officer Koehler testified that appellant's finger struck him in the eye, inflicting a cut on his cornea. He said that the laceration was quite painful and caused him to miss work for a week.

At the conclusion of the State's case, appellant presented argument to the court on his motion to suppress the drugs seized by the officers. The trial court denied the motion, and appellant proceeded with his defense.

Witness Ralph Riddle testified that he operated a mechanic shop across the street from the vacant lot, which was owned by his father. He said that he parked vehicles in the vacant lot after completing repairs and that the vehicle in which appellant was sitting belonged to one of his customers. Riddle testified that appellant was a friend of the family and that appellant helped him around the shop but not on a full-time basis. He said that appellant had access to the shop and keys to the vehicles and that he had no concerns about appellant being in a car on the lot.

Appellant also presented the testimony of Ray Conley. Conley stated that he was outside his home that morning playing with his dog and that he could see appellant in the vehicle located in the vacant lot across the street from Mr. Riddle's shop. He testified that the officers "did a donut" in the street, pulled beside the vehicle in which appellant was sitting, and then"snatched [appellant] out" of the vehicle. He said that the officers found the

drugs a "good distance down the field" and away from the vehicle and that the officers were the first people in that area.

Appellant testified as well. He said that he worked for Mr. Riddle and that he was talking on the phone and about to move the vehicle into the shop when the officers arrived. Appellant testified that the officers surprised him when they approached the vehicle and that he rolled down the window to speak with them. He said that they ordered him to put his hands on the ceiling and that they pulled him out of the vehicle. He denied fighting with the officers and said that he did not try to harm them. Appellant further testified that he had no drugs with him in the vehicle and that the drugs the officers found did not belong to him.

After appellant rested his case, he renewed his motion to suppress. The trial court denied the motion and also found appellant guilty of all charges. This appeal followed.

For reversal, appellant contends that the trial court erred by not suppressing the evidence. Appellant asserts that the officers lacked reasonable suspicion to detain him pursuant to Rule 3.1 of the Arkansas Rules of Criminal Procedure. He further argues that the stop was not justified under Rule 2.2 of the Rules of Criminal Procedure. Our review of the record reveals that appellant lacks standing to contest the search and seizure of the drugs. Therefore, we cannot reach the merits of appellant's argument.

Fourth Amendment rights against unreasonable searches and seizures are personal in nature. *Anderson v. State*, 103 Ark. App. 137, ___ S.W.3d ___ (2008). Thus, a person's Fourth Amendment rights are not violated by the introduction of damaging evidence secured by a search of a third person's premises or property. *Travis v. State*, 95 Ark. App. 63, 233

S.W.3d 705 (2006). One is not entitled to automatic standing simply because he is present in the area or premises or because an element of the offense with which he is charged is possession of the thing discovered in the search. *Vidos v. State*, 367 Ark. 296, 239 S.W.3d 467 (2006). For a person to claim the protection of the Fourth Amendment, the pertinent inquiry is whether the person manifested a subjective expectation of privacy in the area searched and whether society is prepared to recognize that expectation as reasonable. *Id.* The supreme court recently recognized that the issue of standing can be raised for the first time on appeal based on the time-honored rule that an appellate court may affirm the result reached by the trial court, if correct, even though the reason given by the trial court may have been wrong. *Stokes v. State*, ___ Ark. ___, ___ S.W.3d ___ (Jan. 22, 2009). *See also Ramage v. State*, 61 Ark. App. 174, 966 S.W.2d 267 (1998).

In *Bernal v. State*, 48 Ark. App. 175, 892 S.W.2d 537 (1995), Bernal was charged with possession of marijuana with intent to deliver after the police found marijuana in a suitcase on a bus. Bernal moved to suppress the drugs found in the suitcase, but we held that Bernal did not have standing to challenge the search because he disclaimed ownership of the suitcase.

Similarly, in the case at bar, appellant testified that the drugs did not belong to him. Moreover, appellant presented testimony that the officers found the drugs in a distant area of the vacant lot. Under these circumstances, we can only conclude that appellant did not meet his burden of proving that his own Fourth Amendment rights were violated. Appellant denied having any interest in the contraband and claimed that the officers found the drugs in an area owned by a third person and open to the public. Accordingly, we affirm the denial

of the motion to suppress because appellant lacks standing to contest the search and seizure. *See Vidos v. State*, *supra* (holding that appellant lacked standing to contest search of third party's premises or land on an open road); *Bernal v. State*, *supra* (holding that appellant who disclaimed ownership lacked standing to challenge search of property).

Affirmed.

PITTMAN and GLADWIN, JJ., agree.